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Eagle Distribution Services and Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL-CIO. Case 31-CA-22089

DECISION AND ORDER

CHAIRMAN GOULD AND MEMBERS BROWNING
AND HIGGINS

Upon a charge filed by the Union on June 21, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 31, 1996, against Eagle Distribution Services, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 20, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On December 23, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 27, 1996, notified the Respondent that unless an answer was received by December 9, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Los Angeles, California, has been engaged in the transportation and delivery of candy to retail stores operated by See's Candy Shops, Inc. The Respondent, in conducting its business operations, annually provided from its Los Angeles facility services valued in excess of \$50,000 directly to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standard. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Included: Drivers performing distribution services for See's Candy Shops, Inc. or other businesses within the jurisdictional territory of the Union.

Excluded: All other employees, guards and supervisors as defined in the Act.

Since before May 23, 1994, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 23, 1994, through May 31, 1996. Since about February 22, 1996, the Union has requested the Respondent to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since that date, and at all times thereafter, the Respondent has failed and refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit by refusing to meet with the Union for the purpose of negotiating or discussing the terms of a successor collective-bargaining agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively in good faith with the exclusive collective-

bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to meet and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Eagle Distribution Services, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet with Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the following employees for the purpose of negotiating or discussing the terms of a successor collective-bargaining agreement:

Included: Drivers performing distribution services for See's Candy Shops, Inc. or other businesses within the jurisdictional territory of the Union.

Excluded: All other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union over the terms of a successor collective-bargaining agreement and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Los Angeles, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous

places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 21, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

William B. Gould IV, Chairman

Margaret A. Browning, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to meet with Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the following employees for the purpose of negotiating or discussing the terms of a successor collective-bargaining agreement:

Included: Drivers performing distribution services for See's Candy Shops, Inc. or other businesses within the jurisdictional territory of the Union.

Excluded: All other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, meet and bargain with the Union over the terms of a successor collective-bargaining agreement and, if an understanding is reached, to embody the understanding in a signed agreement.

EAGLE DISTRIBUTION SERVICES